

1 DAWN SESTITO (S.B. #214011)  
dsestito@omm.com  
2 JUSTINE M. DANIELS (S.B. #241180)  
jdaniels@omm.com  
3 O'MELVENY & MYERS LLP  
400 South Hope Street, 18th Floor  
4 Los Angeles, California 90071-2899  
Telephone: +1 213 430 6000  
5 Facsimile: +1 213 430 6407

6 JACOB P. DUGINSKI (S.B. #316091)  
jduginski@bdlaw.com  
7 JAMES M. AUSLANDER (*pro hac vice*)  
jauslander@bdlaw.com  
8 BEVERIDGE & DIAMOND P.C.  
456 Montgomery Street, Suite 1800  
9 San Francisco, California 94104  
Telephone: +1 415 262 4000

10 Attorneys for Petitioner and Plaintiff  
11 Exxon Mobil Corporation

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 EXXON MOBIL CORPORATION,

15 Petitioner and  
16 Plaintiff,

17 v.

18 SANTA BARBARA COUNTY  
19 BOARD OF SUPERVISORS,

20 Respondent and  
21 Defendant,

22 and

23 ENVIRONMENTAL DEFENSE  
CENTER, GET OIL OUT!,  
24 SANTA BARBARA COUNTY  
ACTION NETWORK, SIERRA  
25 CLUB, SURFRIDER FOUNDATION,  
26 CENTER FOR BIOLOGICAL  
DIVERSITY, and WISHTOYO  
27 FOUNDATION,

28 Intervenors.

Case No. 2:22-cv-03225-DMG (MRWx)

**PETITIONER AND PLAINTIFF  
EXXON MOBIL CORPORATION'S  
NOTICE AND *EX PARTE*  
APPLICATION TO CONTINUE  
HEARING ON MOTIONS FOR  
SUMMARY JUDGMENT,  
CURRENTLY SCHEDULED FOR  
JUNE 16, 2023, BY NINETY (90)  
DAYS TO SEPTEMBER 15, 2023**

**Judge:** Hon. Dolly M. Gee  
**Courtroom:** 8C

**NOTICE OF *EX PARTE* APPLICATION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Petitioner and Plaintiff Exxon Mobil Corporation (“ExxonMobil”), by and through its counsel, hereby applies *ex parte* pursuant to Central District of California Local Rules 7-19 and 40-1 for an order continuing the hearing on the parties’ respective motions for summary judgment currently scheduled for June 16, 2023 (Dkt. No. 21) for approximately ninety (90) days, until September 15, 2023 or the first available date on the Court’s calendar thereafter. The motions at issue are: Respondent and Defendant Santa Barbara County Board of Supervisors’ (the “Board”) Partial Motion for Summary Judgment (Dkt. No. 34), Intervenor Environmental Defense Center, Get Oil Out!, Santa Barbara County Action Network, Sierra Club, Surfrider Foundation, Center for Biological Diversity, and Wishtoyo Foundation (“Intervenors”) Motion for Summary Judgment (Dkt. No. 33), and Exxon Mobil’s Cross-Motion for Summary Judgment (Dkt. No. 44).

ExxonMobil makes this application because it recently identified potential opportunities that would allow it to truck oil to Sisquoc where it could potentially then go to market. If feasible, these opportunities might moot or provide an opportunity to dispose of all claims in this action. ExxonMobil respectfully requests a brief 90-day extension so that it can evaluate the potential opportunities and, if feasible, meet and confer with the Board and Intervenor to determine appropriate next steps. This *ex parte* application to continue the June 16, 2023 summary judgment hearing date is based on this Notice, the attached Application and memorandum of points and authorities, the Declaration of Dawn Sestito (“Sestito Decl.”) filed concurrently herewith, all pleadings and records on file in this action, and such other evidence and argument as may be presented to the Court.

Per Local Rule 7-19, counsel for ExxonMobil telephonically met and conferred with counsel for Board and counsel for the Intervenor on June 7, 2023,

1 about the proposed continuance. During that call, counsel for the Board indicated  
2 that they agreed to and would stipulate to the continuance. Counsel for the  
3 Intervenor indicated their intention to oppose. Accordingly, during the same call  
4 counsel for ExxonMobil advised the other parties that it expected that it would seek  
5 relief and file this *ex parte* application. Shortly thereafter, counsel for ExxonMobil  
6 confirmed its intent to move *ex parte* via an email to counsel for the parties. *See*  
7 Sestito Decl. ¶¶ 7-11.

8  
9  
10 DATED: June 8, 2023

O'MELVENY & MYERS LLP

11  
12 By: /s/ Dawn Sestito

13 Dawn Sestito  
14 Attorneys for Petitioner and Plaintiff  
15 Exxon Mobil Corporation.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   **EX PARTE APPLICATION AND MEMORANDUM IN SUPPORT**

2                   **INTRODUCTION**

3           The Court should continue the hearing on the parties’ respective motions for  
4 summary judgment—currently scheduled for June 16, 2013—because Petitioner  
5 and Plaintiff Exxon Mobil Corporation (“ExxonMobil”) has recently learned of  
6 potential opportunities which, if feasible, could largely (if not entirely) resolve this  
7 action. ExxonMobil seeks a brief, ninety (90) day continuance for the hearing so it  
8 can explore these possibilities, assess their feasibility, and meet and confer with the  
9 other parties (including Intervenor) regarding next steps, which could include a  
10 potential resolution. Sestito Decl. ¶¶ 4,6. Defendant Santa Barbara County Board  
11 of Supervisors (the “Board”) does not oppose this application and agreed to enter  
12 into a stipulation to continue the hearing date. *See id* ¶ 8. Notwithstanding the  
13 consent of the Board, intervenors Environmental Defense Center, Get Oil Out!,  
14 Santa Barbara County Action Network, Sierra Club, Surfrider Foundation, Center  
15 for Biological Diversity, and Wishtoyo Foundation (the “Intervenor”) refused to  
16 stipulate to extend the hearing date and stated their intent to oppose any application  
17 for an extension. *See id* ¶ 9.

18           Good cause exists to continue the hearing date. The requested extension may  
19 allow the parties to moot or resolve the claims, which could obviate the need for a  
20 decision on the pending motions. The policies of this Court encourage settlements  
21 between the parties and favors reasonable means to achieve this goal. *See Local*  
22 *Rule 16-15*. *Ex parte* relief is warranted here given that the hearing date is only  
23 eight days away, the requested extension is not material given that the Project has  
24 been pending since 2017, and the Intervenor will suffer no prejudice since the  
25 Project currently remains denied. Sestito Decl. ¶ 10. In light of these  
26 circumstances, ExxonMobil requests that the Court set the hearing on parties  
27 respective motions for summary judgment for September 15, 2023 or the first  
28 available date on the Court’s calendar thereafter.

## BACKGROUND

ExxonMobil filed this action on May 11, 2022, seeking *inter alia* a writ of administrative mandate pursuant to California Code of Civil Procedure section 1094.5 arising from the Board’s March 8, 2022 denial of ExxonMobil’s application to temporarily truck oil from its Santa Ynez Unit (“SYU”) to one of two locations—the Santa Maria Pump Station (“SMPS”), located outside of the City of Santa Maria via Highway 101, or to Pentland Terminal (“Pentland”) in Kern County via Highway 101 and State Route 166 (as modified, the “Project”). *See* Sestito Decl. ¶ 3; *see also* Dkt. No. 44 at 6 (EM Mot.). During the pendency of the Project’s review, SMPS announced its intentions to close in 2023, requiring that all Project trucks go to Pentland. *See* Dkt. No. 44 at 6, fn. 6 (EM Mot.).

Both the Board and Intervenors cite the closure of SMPS and the necessity of going to Pentland, which would include approximately 50 additional miles of travel along Route 166, as being a key factor in the Project’s denial. Dkt. No. 46 at 1 (Bd. Reply, closure of SMPS “dramatically impacted Exxon’s interim trucking proposal by eliminating SMPS as a destination for SYU crude oil.”); *id.* at 17 (Bd. Reply Brief, “[t]he Board’s decision was influenced by evidence in the record making it clear that SMPS would soon close, so that all 78 tanker trucks leaving [Exxon’s facility] every 24-hours would have to travel State Route 166”); Dkt. No. 47 at 17 (Intvs. Reply, “Supervisor Williams noted that with the closure of the SMPS, the Project “puts many trucks on the road driving very far . . . .”). In particular, in its findings for denial the Board stated that “if all of the truck trips terminated at [SMPS] as previously proposed, the total distance of the truck trips would be lower. But now, with the slated closure of [SMPS] in 2023, truck trips will shift to driving to Kern County for most of the duration of the Project,” thus “minimiz[ing] the

1 previously-identified benefit that the Project would reduce truck traffic eastbound  
2 from [SMPS].” 1-AR-000011.<sup>1</sup>

3 ExxonMobil recently identified potential opportunities that would allow it to  
4 truck oil to Sisquoc—located along Highway 101 near SMPS—where it could  
5 potentially then go to market. If one of those opportunities was feasible,  
6 ExxonMobil would be able to seek permission to truck oil to Sisquoc using only  
7 Highway 101, thereby taking a shorter route and avoiding Route 166. Sestito Decl.  
8 ¶ 4. In light of this potential change in circumstances, ExxonMobil seeks a  
9 continuance of 90 days so that it can evaluate the potential opportunities and, if  
10 feasible, meet and confer with the Board and Intervenors to determine appropriate  
11 next steps, including whether the other opportunities might moot or provide an  
12 opportunity to dispose of all claims in this action. *Id.* ¶ 6.

13 Counsel for ExxonMobil telephonically met and conferred with counsel for  
14 the Board and Intervenors regarding the proposed continuance on June 7, 2023. *Id.*  
15 ¶ 7. Counsel for the Board stated that the Board did not oppose the request and  
16 would stipulate to the same. *Id.* ¶ 8. Counsel for Intervenors stated that they  
17 wanted the hearing to proceed because the matter has been fully briefed and so they  
18 would not stipulate to the requested continuance and would oppose it. *Id.* ¶ 9.

### 19 ARGUMENT

20 In the Central District, an application for the continuance of a hearing date  
21 must be “served and filed at least five (5) days before the day set for trial,” L.R.  
22 40-1. Here, good cause exists for the 90-day continuance. Local Rule 16-15 states  
23 in relevant part that: “It is the policy of the Court to encourage disposition of civil  
24 litigation by settlement when such is in the best interest of the parties. The Court  
25 favors any reasonable means to accomplish this goal.” ExxonMobil requests a 90-  
26 day continuance of the summary judgment hearing for purposes of exploring

---

27  
28 <sup>1</sup> ExxonMobil maintains that the Board’s denial of the Project was not supported by  
the evidence in the record. *See* Dkt. No. 46 (EM Mot); Dkt. No. 48 (EM Reply).

1 potential opportunities that might allow it to truck oil to Sisquoc where it could  
2 potentially then go to market. If one of those opportunities were feasible,  
3 ExxonMobil would be able to seek permission to truck oil to Sisquoc using only  
4 Highway 101, thereby taking a shorter route and avoiding Route 166, which was  
5 identified as a concern. Sestito Decl. ¶ 4. This may moot or provide an opportunity  
6 to dispose of all claims, which could result in the dismissal of this action without  
7 the Court having to decide the pending summary judgment motions. *Id.* ¶ 6.

8 ExxonMobil is seeking this continuance so that it can explore these potential  
9 opportunities and then confer with the Board and Intervenors regarding whether  
10 there is a path to moot or resolve the claims. If the opportunities are not feasible or  
11 there is no potential path to moot or resolve the claims, the hearing will proceed in  
12 September. To the extent Intervenors argue that there is no certainty that the claims  
13 will be mooted or resolved in the next 90 days, that is the point of the  
14 continuance—to give the parties time to work through those issues and confer about  
15 them and determine what, if any, next steps are appropriate. *Id.* ¶ 10.

16 Intervenors suffer no prejudice by this continuance. The Project remains  
17 denied and no oil is being trucked. *Id.* If Intervenors’ true motive is to block any  
18 potential resolution, they are overstepping their bounds. Both ExxonMobil and the  
19 Board agreed to the continuance. It is not for the Intervenors to stand in the way of  
20 a potential resolution or to prevent discussions about a potential resolution from  
21 occurring. *See S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 806-07 (9th Cir. 2002)  
22 (“An intervenor does not have the right to prevent other parties from entering into a  
23 settlement agreement.”). ExxonMobil simply seeks a continuance—short given  
24 that the Project has been pending for more than 5 years already—to evaluate  
25 options that have the potential to moot this litigation and then to meet-and-confer  
26 with both the Board and Intervenors. Sestito Decl. ¶ 10.

27 *Ex parte* relief is appropriate here because the hearing is only 8 days away  
28 and if the hearing proceeds as scheduled, ExxonMobil will lose the ability to pursue



discussions that could lead to a mooted or potential resolution of this litigation. ExxonMobil recently learned of these new opportunities and promptly sought a stipulation with the Board and Intervenor. *See, e.g., Federal Trade Commission vs. Cardiff*, 2020 WL 3124348 (C.D. Cal. 2020) (granting *ex parte* motion to continue motion filing deadline and trial date on showing of good cause); *Swift Harvest USA, LLC v. Boley International HK, LTD*, 2019 WL 10631253 (C.D. Cal. 2019) (granting continuance of motion to dismiss hearing date where plaintiff would be prejudiced if the hearing date were not moved and where plaintiff was not at fault in creating the circumstances that require *ex parte* relief).

### NAMES AND ADDRESSES OF OPPOSING COUNSEL

Pursuant to Local Rules 7-19 and 7-19.1, the name, email address, street address, and telephone number for Intervenor's counsel—who oppose the requested continuance—are as follows:

Linda Krop  
lkrop@environmentaldefensecenter.org  
Margaret M. Hall  
mhall@environmentaldefensecenter.org  
ENVIRONMENTAL DEFENSE CENTER  
906 Garden Street  
Santa Barbara, CA 93101  
Tel. (805) 963-1622 / Fax. (805) 962-3152  
Attorneys for Environmental Defense Center, Get Oil Out!, Santa Barbara County Action Network, Sierra Club, and Surfrider Foundation

Julie Teel Simmonds  
jteelsimmonds@biologicaldiversity.org  
Elizabeth Jones  
ljones@biologicaldiversity.org  
CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway, Suite 800  
Oakland, CA 94612  
Tel. (510) 844-7100 / Fax. (510) 844-7150  
Attorneys for Center for Biological Diversity and Wishtoyo Foundation

The name, email address, street address, and telephone number for Board's counsel—who do *not* oppose the requested continuance—is as follows:

Mary Pat Barry, Sr. Deputy  
mpbarry@countyofsb.org  
COUNTY OF SANTA BARBARA



1 105 E. Anapamu St., Suite 201  
2 Santa Barbara, CA 93101  
3 (805) 568-2950 / FAX: (805) 568-2982  
4 Attorneys for Respondent and Defendant Santa Barbara County Board of  
Supervisors

5 Respectfully submitted,

6 Dated: June 8, 2023

O'MELVENY & MYERS LLP

7  
8 By: /s/ Dawn Sestito  
9 Dawn Sestito

10 Attorneys for Petitioner and Plaintiff  
11 Exxon Mobil Corporation  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28